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Paper No. 9

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In re Patent No. 5,927,278
Issued: July 27, 1999
Application No.: 09/135,789
Filing Date: August 18, 1998
Attorney Docket No.

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: REQUEST FOR INFORMATION
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This is a request for information in response to the petition under 37 CFR 1.378(b), filed October 8, 2009, to reinstate the above-cited patent.

Petitioner is allowed a non-extendable period for reply of **TWO (2) MONTHS** from the mailing date of this communication to provide a response. The response should be titled, "Response to Request for Information." If no response is provided within the period set forth, a decision will be made solely on the merits as set forth in the petition under 37 CFR 1.378(b) filed September 28, 2009. No additional fees are due.

The patent issued July 27, 1999. The 7.5 year maintenance fee could have been paid from July 27, 2006, through January 27, 2007, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period from January 28, 2007, to July 27, 2007. Petitioner did not do so. Accordingly, the patent expired at midnight on July 27, 2007.

Petitioner is required to address the following points:

Section 2590 of the *Manual of Patent Examining Procedure* (MPEP) specifically states, in pertinent part, that:

... the patentee's lack of knowledge of the need to pay the maintenance fee and the failure to receive the Maintenance Fee Reminder do not constitute unavoidable delay. Under the statutes and rules, the Office has no duty to notify patentees of the requirement to pay maintenance fees or to notify patentees when the maintenance fees are due. It is solely the responsibility of the patentee to ensure that the maintenance fee is timely paid to prevent expiration of the patent. The lack of knowledge of the requirement to pay a maintenance fee and the failure to receive the Maintenance Fee Reminder will not shift the burden of monitoring the time for paying a Maintenance fee from the patentee to the Office.

While the patentee's failure to track the maintenance fee schedule for the subject patent is regrettable, the failure to pay a maintenance fee based on the failure to receive notice that the maintenance fee is due not satisfy the unavoidable standard of 37 CFR 1.378(b). Accordingly, petitioner must affirmatively state how the maintenance fee payment was missed.

Petitioner must also address how petitioner treated the maintenance of the patent as petitioner's most important business. Petitioner must demonstrate that petitioner acted reasonably and

diligently relative to the maintenance of the patent. Specifically, petitioner may wish to address how petitioner tracked the maintenance fee payment schedule for the patent, if at all.

Petitioner must describe when and how petitioner discovered that the patent was expired and the steps taken to promptly address the matter.

If petitioner is relying on the medical issues of petitioner's mother and spouse, petitioner must provide a statement and documentation that demonstrates how medical issues of petitioner's mother and spouse contributed to the alleged unavoidable delay in paying the maintenance fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patent
Mail Stop Petitions
Box 1450
Alexandria, VA 22313-1460

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petition Attorney
Office of Petitions